

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JULIE BRASHEAR	:	CASE NO.: 1:21-cv-700
1952 Erion Road	:	
Batavia, OH 45103	:	
	:	<u>COMPLAINT WITH JURY DEMAND</u>
Plaintiff,	:	
v.	:	
	:	
PACIRA PHARMACEUTICALS,	:	
INC.	:	
c/o The Corporation Trust Company	:	
Corporation Trust Center	:	
1209 Orange Street	:	
Wilmington, DE 19801	:	
	:	
and	:	
	:	
PACIRA PHARMACEUTICALS	:	
INTERNATIONAL, INC.	:	
c/o The Corporation Trust Company	:	
Corporation Trust Center	:	
1209 Orange Street	:	
Wilmington, DE 19801	:	
	:	
and	:	
	:	
PACIRA BIOSCIENCES, INC.	:	
c/o The Corporation Trust Company	:	
Corporation Trust Center	:	
1209 Orange Street	:	
Wilmington, DE 19801	:	
	:	
Defendants.	:	

PARTIES, VENUE AND JURISDICTION

Plaintiff, Julie Brashear, for her Complaint against Defendants, states and alleges as follows:

1. Plaintiff, Julie Brashear, is and was at all times relevant herein a resident of Clermont County, Ohio.

2. Defendant, Pacira Pharmaceuticals, Inc., is a foreign for-profit organization incorporated in Delaware with its principal place of business in Parsippany, New Jersey. Its registered agent is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

3. Defendant, Pacira Pharmaceuticals International, Inc., is a foreign for-profit organization incorporated in Delaware with its principal place of business in Parsippany, New Jersey. Its registered agent is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

4. Defendant, Pacira Biosciences, Inc., is a foreign for-profit organization incorporated in Delaware with its principal place of business in Parsippany, New Jersey. Its registered agent is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

5. Pacira Pharmaceuticals, Inc., Pacira Pharmaceuticals International, Inc., and Pacira Biosciences, Inc. will hereinafter collectively be referred to as “Defendants” or “Pacira Defendants.”

6. Julie Brashear’s injuries occurred in Hamilton County, Ohio. Venue is proper in this Court.

7. This Court has personal jurisdiction over Plaintiff and Defendants.

8. This Court has subject matter jurisdiction over this matter as there is diversity of citizenship between Plaintiff and Defendants and the amount in exceed \$75,000.

BACKGROUND

9. Plaintiff incorporates by reference the allegations contained in Paragraph 1 through 8 as if fully restated here.

10. Julie Brashear underwent left shoulder replacement surgery at Mercy Health – Anderson Hospital on or about November 7, 2019.

11. After her left shoulder surgery, the treating medical professionals used an injectable anesthetic, Exparel (generically known as “liposomal bupivacaine”), as part of the post-operative pain relief modalities.

12. At all times relevant herein, Exparel was developed and is produced by Pacira Biosciences, Inc. and/or Pacira Pharmaceuticals, Inc. and/or Pacira Pharmaceuticals International, Inc.

13. Exparel was defectively developed, designed, marketed and produced. These defects cause persistent diaphragmatic paralysis which is harmful and potentially deadly to patients receiving post-surgical medical treatment where Exparel was used for non-opioid pain management.

14. As a result of the Exparel injection for nerve-blocking at Plaintiff’s brachial plexus, Plaintiff’s phrenic nerve was injured, resulting in paralysis and injury to the left side of her diaphragm. This caused Plaintiff to develop pneumonia and long-term breathing issues including, but not limited to, shortness of breath, atelectasis of the left lung, and the inability to use her left lung.

15. Defendants knew that an Exparel injection created a substantial risk that patients would develop lung and diaphragm issues, including diaphragm paralysis.

16. Despite this knowledge, Defendants failed to warn Julie Brashear or the prescribing physicians about this serious risk associated with the use of Exparel.

17. Plaintiff learned that her breathing and lung problems were not related to pneumonia, but rather due to hemidiaphragm paralysis and left lung atelectasis following a sniff test on March 13, 2020.

**CLAIM ONE – PRODUCT LIABILITY – DESIGN DEFECT BY PACIRA
DEFENDANTS**

18. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 17 as if fully restated here.

19. Defendants improperly and defectively designed and developed the Exparel medication.

20. This claim is being brought pursuant to R.C. 2307.75.

21. It was foreseeable when the Exparel left the hands of the Pacira Defendants that it would cause harm, or that it was more dangerous than the ordinary consumer would expect.

22. As a proximate result of the improper and defective design and development of the Exparel medication, Julie Brashear was caused injury.

CLAIM TWO – PRODUCT LIABILITY – FAILURE TO WARN

23. Plaintiff incorporates by reference the allegations contained in Paragraph 1 through 22 as if fully restated here.

24. The Pacira Defendants were aware of the defects and dangers of Exparel, specifically the possibility of diaphragm and/or lung injuries in patients subsequent to Exparel injection in the brachial plexus.

25. This claim is being brought pursuant to R.C. 2307.76.

26. The Pacira Defendants failed to warn Julie Brashear or her treating physicians of the dangers of Exparel in a manner that a reasonable drug manufacturer or developer would have done.

27. As a proximate result of the failure to warn Julie Brashear or her treating physicians of the defects and dangers of Exparel, Julie Brashear was caused injury.

CLAIM THREE – PRODUCT LIABILITY – FAILURE TO CONFORM TO REPRESENTATIONS

28. Plaintiff incorporates by reference the allegations contained in Paragraph 1 through 27 as if fully restated here.

29. The Pacira Defendants represented that Exparel was safe and effective for use in post-operative pain management.

30. This claim is being brought pursuant to R.C. 2307.77.

31. The Exparel did not conform to the representations made by the Pacira Defendants.

32. As a proximate result of the failure of the Exparel to conform to the representations of the Pacira Defendants, Julie Brashear was caused injury.

CLAIM FOUR – PRODUCT LIABILITY - NEGLIGENCE

33. Plaintiff incorporates by reference the allegations contained in Paragraph 1 through 32 as if fully restated here.

34. The Pacira Defendants were negligent as developers, designers, manufacturers, and suppliers of Exparel.

35. This claim is being brought pursuant to R.C. 2307.78.

36. The negligence of the Defendants allowed a dangerous drug to be released to the market, sold to physicians, and used to cause injury to Julie Brashear.

37. The negligence of Defendants was the proximate cause of Julie Brashear's injury.

CLAIM FIVE – PUNITIVE DAMAGES AGAINST DEFENDANTS

38. Plaintiff incorporates by reference the allegations contained in Paragraph 1 through 37 as if fully restated here.

39. Defendants acted with malice and in conscious disregard for the health and safety of its customers, including Julie Brashear.

40. Plaintiff is entitled to punitive damages against Defendants.

41. Plaintiff is entitled to recover her attorney's fees and expenses against Defendants.

WHEREFORE, Plaintiff, for her Complaint against Defendants, prays for relief in an amount in excess of the minimum jurisdictional limits of this Court on all her claims, punitive damages, attorney's fees, and expenses incurred herein, and any and all further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Respectfully submitted,

THOMAS LAW OFFICES PLLC

/s/ Louis C. Schneider

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